Abdul Razak submits that the Ordinance does not say how the Controller's approval may be given, that it may be given orally or in writing, it may be given by conduct, at the time of the impounding or afterwards, that here the Controller had by circular D11 given approval to the impounding, that the letter P6 was post facto approval by a Controller of the impounding of the book. With respect I agree that the Controller's approval need not be given in any particular way, that it may be given in writing or orally, or by conduct, but I do not agree that it may be given before the impounding. On a proper construction of section 9 it must be given after the first defendant had himself formed the necessary suspicion and opinion. I agree that it may be given some time after the first defendant had formed the necessary suspicion and opinion; but here there is no getting away from the fact that there is no evidence that the author of letter P6 who signed on behalf of the Secretary-General, Ministry of Home Affairs, is a Controller appointed under section 3 of the Ordinance.

On the second issue, I would respectfuliy agree with the learned trial judge that the impounding of the book was wrongful.

I would therefore dismiss this appeal.

As to costs, the learned judge awarded the plaintiff costs on the lower scale. In my opinion that order should stand. The plaintiff will also get his costs here.

Gill and **Ong Hock Sim F.JJ.** concurred.

Appeal dismissed.

Solicitors: *S Sivasubramanian.*

WAN NAIMAH v. WAN MOHAMAD NAWAWAI

[F.C. (Azmi L.P., Suffian C.J. and Ali F.JJ.)
November 23, 1973]
[Kuala Trengganu — Federal Court Civil Appeal No. 121 of 1972]

Land Laws — Trust — Declaration of trust — May be made informally, provided words are clear and unequivocal.

In this case the land had been sold to the parties' father but the land was transferred to the brother-in-law of the purchaser. Subsequently the whole land was transferred to the appellant, the daughter. The respondent, the son of the purchaser, was then still an infant. There was evidence to show that the father intended to create a trust of an undivided half share in the land in favour of his son, the respondent. The learned trial judge held that the appellant held the half-share in the land in trust for the respondent. The appellant appealed.

Held, dismissing the appeal: on the facts the learned trial judge was right in holding that the half-share in the land was held by the appellant, the registered proprietress, in trust for the respondent.

Case referred to:-

(1) *Grant* v. *Grant* 55 E.R. 776.

The following authorities were also cited in arguments: *Shephard* v. *Cartwright* [1955] A.C. 431, H.L.; [1954] 3 All E.R. 649; *Yew Phaik Hoon* v. *Quah Ooi Keat and Anor.* [1969] 1 M.L.J. 32, 34 2nd column F. 35 1st column, line I; *Standing* v. *Bowring* (1885) 31 Ch. D. 282; *Booth* v. *Turle* (1873) L.R. 16 Eq. 182, 188; *M'sadden* v. *Jenkyns* 41 E.R. 589; *Parker* v. *Stones* (1868) L.J. Ch. 46 or 19 L.T. 259; *Thorpe* v. *Owen* 49 E.R. 563; *Grey* v. *I.R.E.* [1958] 2 All E.R. 428, 430, 433 B3; *A.G.* v. *Downing* 97 E.R. 1, 9; *Gray* v. *Gray* 61 E.R. 345, 349; *Morgan* v. *Malleson* (1870) L.R. 10 Eq. 475, 476; *Warren* v. *Gurney* [1944] 2 All E.R. 472, 474; *Richards* v. *Delbridge* (1874) L.R. 18 Eq. 11.

FEDERAL COURT.

Datuk H. L. Wrigglesworth for the appellant.

Raja Abdul Aziz bin Raja Addruse for the respondent.

Suffian C.J. (delivering judgment of the Court): The main question in this appeal is whether the plaintiff (respondent before us) has proved that an undivided half share in Lot No. 396 in Pasir Mas and bearing Grant No. 5050 is held by the registered proprietress, his sister the defendant (appellant before us), in trust for him, as was found by the learned trial judge.

The undisputed facts are as follows. The land in question originally belonged to Wan Ibrahim bin Haji Wan Sulaiman. Some time before 7th April, 1956, he sold it to Haji Wan Abdullah, the parties' father now deceased. On that day Wan Ibrahim transferred it not to the purchaser but to the purchaser's brother-in-law, one Ahmad bin Haji Awang. At that time the purchaser's daughter (the defendant) was already married, but his son (the plaintiff) was still an infant. On 9th June, 1957, Ahmad bin Haji Awang transferred the whole land to the defendant.

In 1960 the deceased built on the land a shophouse which was completed early in 1961. The deceased occupied the shophouse for about four months, and then he leased it to the United Malayan Banking Corporation. Some time in 1968 the deceased died. The land had never at any time been registered in his name and at the time of his death it was registered in his daughter's name.

The plaintiff claims that his sister held an undivided half share in the land including the portion occupied by the shophouse in trust for him.

With respect we agree with the learned trial judge that the plaintiff has produced evidence sufficient to prove that the defendant held that half undivided share in trust for him, and that therefore this appeal be dismissed.

The law is that a declaration of trust may be made quite informally, provided that the words used are clear and unequivocal. As was stated by Romilly M.R. in *Grant* v. *Grant*,[1] words declaring a trust

"need not be in writing.... They must be clear, unequivocal and irrevocable, but it is not necessary to use any technical words, it is not necessary to say, 'I hold the property in trust for you,' nor is it necessary to say, 'I hold the same for your separate use.' Any words that the donor means, at the time he speaks, to divest himself of all beneficial interest in the property are, in my opinion, sufficient for the purpose of creating the trust. I think that it is also sufficient for the purpose of shewing that the trust has been created, if he afterwards states that he has so created the trust, though there was no witness except the donee present at the time the trust was created." (Page 777.)

The Master of the Rolls was speaking of a declaration of trust in respect of chattels, which may be created by parole, but as a trust in respect of land may be created in Kelantan also by parole (the English Statute

of Frauds does not apply), we are of the opinion that the principle above stated is applicable to this case.

Now what is the evidence here that the deceased intended to create a trust in respect of an undividual half share in the land in favour of his son, the plaintiff?

Wan Yaacob (PW3) is the vendor's brother. He said that he was present when the deceased was negotiating to buy the land in 1956 and that when the deceased told him that he wanted to give the plaintiff a half share in the land.

Then there is Exhibit A. That is a document executed on 1st January, 1961. It speaks for the defendant as follows:

"I [the defendant] agree to renounce ½ share of said land which is not subdivided including a shophouse thereon in favour of my brother [the plaintiff], ... in consideration of my love and affection towards him, without consideration of any payment.

I shall make formal transfer of said land including a shophouse thereon in favour of my said brother ... upon approval [presumably of subdivision] by the Government."

It was signed by the defendant. It was also signed by the plaintiff above these words:

"And I ... agree to accept the above renunciation."

Not only that, the document was also signed by their deceased father, and by two witnesses both of whom gave evidence for the plaintiff.

One of them was the aforesaid Wan Yaacob who said that the defendant was not present when the deceased told him in 1956 that he wanted to give a half share in the land to the plaintiff, but that the defendant was present at the petition writer's office on 1st January, 1961, when the deceased told him that he was giving a half share in the land to the plaintiff before the document Exhibit A was prepared. The other witness, Syed Hussein (PW4), said that when the deceased asked him to witness the document the deceased told him that the land could not be registered in the plaintiff's name as he was a minor.

The plaintiff himself said that just before their father went on a pilgrimage he (plaintiff) signed the document Exhibit A, that he was then 16, and that the deceased told him then that he had given a half share in the land to him, and that if after his (father's) death sister refused to transfer the half share to him he was to see his cousin Wan Yaacob who was keeping the document Exhibit A.

In our opinion, the words uttered in 1956 by the deceased as reported by the witness PW3 plainly show that the deceased, in the words of Romilly M.R., meant, at the time the deceased spoke, to divest himself of all beneficial interest in the property — as to half in favour of his daughter (the defendant) and as to the other half including the shophouse in favour of his son (the plaintiff). Moreover the execution in 1961 of Exhibit A, after the deceased's declaration in 1956 to Wan Yaacob that he wanted to give a half share in the land to his son, was in itself a statement, a confirmation by the deceased that he had created the trust and an acceptance by the defendant of that confirmation.

For this reason we respectfully agree that the learned judge was right to give judgment in favour of the plaintiff as prayed, and we would therefore dismiss this appeal with costs. Appellant's deposit to respondent against taxed costs.

Appeal dismissed.

Solicitors: *Wrigglesworth & Co.: Rithauddeen & Aziz.*